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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/709,527	11/13/2000	David J. Stucky	196261US55DIV	4882

22850 7590 07/16/2003

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER

KUHNS, ALLAN R

ART UNIT	PAPER NUMBER
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1732

DATE MAILED: 07/16/2003

21

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/709,527

Applicant(s)

STUCKY ET AL.

Examiner

KUHN S

Group Art Unit

1732

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE(3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on APRIL 23, 2003
- ☐ This action is **FINAL**.
- ☐ Since this application is, in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 15 - 17, 21 AND 23 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 15 - 17, 21 AND 23 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 15-17, 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cope in view of Ansted as set forth in the rejection of claim 24 in the Office action mailed July 23, 2002.

3. Applicants' arguments filed April 23, 2003 have been fully considered but they are not persuasive. Applicants argue that Cope fails to disclose that predrilling may be omitted and that Ansted only discloses "self drilling" of screws to a support plate behind a polyurethane foam but not the claimed capability to countersink screws without predrilling. Applicants also note that in Ansted, metal plates contained in the foam plastic are attached by self drilling screws that will drill through the outer skin, foam plastic and plate to anchor themselves in the plate. This is not persuasive because at column 4, lines 27-28 of Ansted it is stated that "(t)he screws 68 also hold a base flange 47 into position ..", thus at least implying that the screws hold the base flange or plate in position by anchoring themselves in the foam.

Applicants further note that "self drilling" does not necessarily mean "countersinking" and argue that the fact that the screws in Ansted are "self drilling" does not mean that they can be countersunk in the board surface without predrilling. This is not persuasive because Ansted at least implies that the self drilling screws could be countersunk (in the absence of base flange 47)

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by stating at column 4, lines 29-33 that the screws selected must be short enough so that they do not reach inner skin 44.

Concerning the examiner's response to the Rule 132 declaration filed November 21, 2002, Applicants argue that the examiner was incorrect in stating that the declaration was not commensurate in scope with the claims because it was stated in terms of different types of screw failure. The examiner is maintaining the previously stated position (1) because the types of screw failure noted in the Rule 132 declaration could occur for other screw functions where countersinking is not involved, and (2) a particular type of screw was used and the scope of the instant claims could include screw types other than the type used in the tests cited in the declaration.

Applicants also argue that the posture of this case falls under In re Ochai. The examiner disagrees because Ochai involves rejoinder of claims (in the same application), and the claims of issued patent 6,344,268 (Stucky et al.) are not of the same scope as the instant claims.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Kuhns whose telephone number is (703) 308-3462. The examiner can normally be reached on Monday to Thursday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino, can be reached on (703) 308-3853. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

*Allan R. Kuhns*  
ALLAN R. KUHNS  
PRIMARY EXAMINER AU 1732  
7-14-03